

NO. 28657

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
WILLIAM MICHAEL BELL, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CRIMINAL NO. 03-1-2278)

E.M. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2008 JUN 23 AM 7:53

FILED

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Leonard, JJ.)

Defendant-Appellant William Michael Bell (Bell) appeals from the May 22, 2007 Order of Resentencing; Revocation of Probation (Revocation and Resentencing Order) filed in the Circuit Court of the First Circuit (circuit court).<sup>1</sup> On appeal, Bell claims that the circuit court abused its discretion when it sentenced him to terms of imprisonment rather than terms of probation.

Bell was charged, by way of the October 24, 2003 Amended Complaint, with one count of Promoting a Dangerous Drug in the Third Degree in violation of Hawaii Revised Statutes (HRS) §712-1243 (1993 & Supp. 2002) and one count of Unlawful Use of Drug Paraphernalia in violation of HRS §329-43.5(a) (1993). Bell entered a plea of no contest to both counts and was sentenced, on January 26, 2004, to five years of probation on each count, with the sentences to run concurrently. The conditions of probation

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<sup>1</sup> The Honorable Virginia Lea Crandall presided.

included, among other requirements, that he obtain and maintain substance abuse treatment until clinically discharged (Initial Conditions of Probation).

On May 4, 2004, the State filed a Motion for Revocation of Probation, Resentencing and Issuance of Bench Warrant (First Motion for Revocation) which alleged that Bell had violated the Initial Conditions of Probation including failure to maintain substance abuse treatment until clinically discharged. At the hearing on the First Motion for Revocation, Bell stipulated that he had violated the Initial Conditions of Probation. Bell asked the court for a second chance to attend a program like Habilitat. The circuit court warned Bell that this would be his last chance, revoked probation, and resentenced Bell to concurrent five-year terms of probation on each count. The conditions of probation included, among other requirements, a one-year term of imprisonment, and that Bell obtain and maintain substance abuse treatment, as directed by the probation officer, until clinically discharged (Second Conditions of Probation).

On August 18, 2004, Bell filed a Motion for Early Release to a Substance Abuse Treatment Program. This motion was granted on August 30, 2004.

On February 14, 2005, the State filed a Motion for Revocation of Probation, Resentencing and Issuance of Bench Warrant (Second Motion for Revocation). The Second Motion for Revocation alleged, among other violations of the Second

Conditions of Probation, that Bell left Habilitat without a clinical discharge on September 29, 2004, was re-admitted on October 10, 2004, and left again without a clinical discharge on January 4, 2005.

At the hearing on the Second Motion for Revocation, Bell stipulated to the violation of the Second Conditions of Probation, and probation was revoked. The circuit court granted Bell's request to be released to the supervision of the Salvation Army Adult Rehabilitation Center and continued resentencing to August 28, 2006. Bell stated that he believed that the Salvation Army Adult Rehabilitation Center program would work for him because it was a Christian-based program.

On August 29, 2006, the resentencing was continued to November 13, 2006 at Bell's request to allow him additional time to enter into a program. Bell failed to appear for resentencing on November 13, 2006.

The resentencing hearing was held on May 21, 2007. Bell told the circuit court that his life had been changed by the birth of his daughter and expressed an interest in trying the Hope program. The circuit court resentedenced Bell to terms of imprisonment of five years on each of the two counts, to be served concurrently. Bell filed a notice of appeal.

We review a resentencing following a revocation of probation for abuse of discretion. State v. Delima, 78 Hawai'i 343, 346, 893 P.2d 194, 197 (1995) (citing State v. Gaylord, 78

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Hawai'i 127, 143-144, 890 P.2d 1167, 1183-84 (1995)).

Upon careful review of the record and the briefs submitted by the parties, and in light of Bell's repeated, inexcusable failures to comply with substantial conditions of probation, it does not appear that the imposition of sentences of imprisonment of five years for each of the counts in the Amended Complaint was an abuse of discretion. Therefore,

IT IS HEREBY ORDERED that the Order of Resentencing; Revocation of Probation filed on May 22, 2007 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 23, 2008.

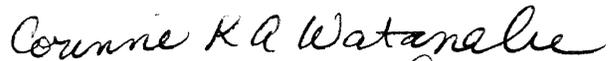
On the briefs:

Shawn A. Luiz  
for Defendant-Appellant.

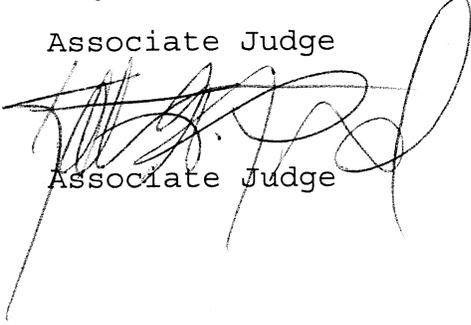
Donn Fudo,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge